



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0779/P8

JK:kjf:ph

84
RMR

DOA:.....Byrnes, BB0203 - Oil company assessment

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

m 1-30-09

D-N

Don't Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill imposes an assessment on a motor vehicle fuel supplier at a rate not exceeding 3 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of biodiesel fuel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

SECTION 1. 25.40 (1) (bd) of the statutes is created to read:

INSERT

1-1

25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

SECTION 2. Chapter 77 (title) of the statutes is amended to read:

CHAPTER 77

TAXATION OF FOREST CROPLANDS;

REAL ESTATE TRANSFER FEES;

SALES AND USE TAXES; COUNTY, TRANSIT AUTHORITY^(B)

AND SPECIAL DISTRICT SALES

AND USE TAXES; MANAGED FOREST

LAND; RECYCLING

SURCHARGE; LOCAL FOOD AND

BEVERAGE TAX; LOCAL RENTAL

CAR TAX; PREMIER RESORT AREA

TAXES; STATE RENTAL VEHICLE FEE;

DRY CLEANING FEES; REGIONAL

TRANSIT AUTHORITY FEE;

OIL COMPANY ASSESSMENT

SECTION 3. Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is created to read:

CHAPTER 77

SUBCHAPTER XIV

OIL COMPANY ASSESSMENT

77.998 Definitions. In this subchapter:

(1) "Annual gross receipts" means the gross receipts that correspond to the state's fiscal year.

*biodiesel fuel, ethanol blended with gasoline
consisting of at least 85 percent ethanol, or*

1 (2) "Biodiesel fuel" means biodiesel fuel, as defined in s. 168.14 (2m) (a), that
2 is not blended with any petroleum product.

3 (3) "Department" means the department of revenue.

4 (4) "Gross receipts" means all consideration received from the first sale of
5 motor vehicle fuel received by a supplier for sale in this state, for sale for export to
6 this state, or for export to this state, not including state or federal excise taxes, or
7 petroleum inspection fees, collected from the purchaser. "Gross receipts" does not
8 include consideration received from the first sale of motor vehicle fuel received by a
9 supplier for sale in this state, for sale for export to this state, or for export to this state,
10 if the motor vehicle fuel is motor vehicle fuel specified under s. 78.01 (2) or (2m).

11 (5) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

12 (6) "Related party" means a person whose relationship with the supplier is
13 described under section 267 (b) of the Internal Revenue Code.

14 (7) "Supplier" has the meaning given in s. 78.005 (14).

15 (8) "Terminal operator" has the meaning given in s. 78.005 (16).

16 **77.9981 Imposition.** (1) For the privilege of doing business in this state, there
17 is imposed an assessment on each supplier at the rate of the following percentages
18 of the supplier's annual gross receipts that are derived from the first sale in this state
19 of motor vehicle fuel received by the supplier for sale in this state, for sale for export
20 to this state, or for export to this state:

21 (a) For the first \$15,000,000 of the supplier's annual gross receipts, 0.0 percent.

22 (b) For that portion of the supplier's annual gross receipts that exceeds
23 \$15,000,000, but not \$75,000,000, 0.5 percent.

24 (c) For that portion of the supplier's annual gross receipts that exceeds
25 \$75,000,000, but not \$120,000,000, 1.5 percent.

(d) For that portion of the supplier's annual gross receipts that exceeds \$120,000,000, 3 percent.

(2) Any person, including a terminal operator, who is not a licensee under s. 78.09 and who either used any motor vehicle fuel in this state or has possession of any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for which the assessment under this subchapter has not been paid or for which no supplier has incurred liability for paying the assessment, shall file a report, in the manner described by the department, and pay the assessment based on the purchase price of the motor vehicle fuel.

77.9982 Administration. (1) The department shall administer the assessment under this subchapter and may take any action, or conduct any proceeding as authorized by law, and impose interest and penalties, as provided under subch. XIII of ch. 71.

(2) The assessments imposed under this subchapter are due and payable as provided under s. 78.12 (5) and as provided by the department by rule.

(3) For purposes of determining the amount of the assessment imposed under this subchapter, income derived from the first sale in this state of biodiesel fuel, of ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol, or of the fuels described in s. 78.01 (2) and (2m) is not included in the supplier's annual gross receipts. For purposes of determining the amount of the assessment imposed under this subchapter, with regard to a transfer of motor vehicle fuel from a supplier to a related party, the point of first sale in this state is the date of such transfer, and the annual gross receipts are calculated on a monthly basis using an index determined by rule by the department. For purposes of this

1 subchapter, there is only one point of first sale in this state with regard to the sale
2 of the same motor vehicle fuel.

3 (4) No person who is subject to the assessment imposed under this subchapter

4 shall take any action to increase or influence the selling price of motor vehicle fuel
5 in order to recover the amount of the assessment. The person primarily responsible

6 for taking any action to increase or influence the selling price of motor vehicle fuel
7 to recover the amount of the assessment is subject to a penalty equal to the amount

8 of the assessment passed through to the purchaser the supplier received from any
9 increase in the selling price that is implemented in order to recover the assessment

10 amount. For purposes of this subsection, the person ^{primarily} responsible for taking any action

11 to increase or influence the selling price of motor vehicle fuel to recover the amount
12 of the assessment is the officer, employee, or other responsible person of a corporation

13 or other form of business association or the partner, member, employee, or other
14 responsible person of a partnership, limited liability company, or sole proprietorship

15 who, as such officer, employee, partner, member, or other responsible person, has a
16 duty to approve, confirm, ratify, or validate the selling price of motor vehicle fuel.

17 (5) At the secretary of revenue's request, the attorney general may represent

18 this state, or assist a district attorney, in prosecuting any case arising under this

19 subchapter.

20 (6) In addition to any other audits the department conducts to administer and

21 enforce this subchapter, the department may audit any supplier who is subject to the

22 assessment imposed under this subchapter to determine whether the supplier has

23 taken any action to increase or influence the selling price of motor vehicle fuel in
24 order to recover the amount of the assessment. Subject to the confidentiality

25 provisions under s. 71.78 (1) to (4) and (5) to (8), as provided under sub. (7), annually,

1 the department shall submit a report to the governor and the legislature, as provided
2 under s. 13.172 (2), that contains information on all audits conducted under this
3 subsection in the previous year.

4 (7) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and
5 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to
6 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.
7 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,
8 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under
9 ch. 71 apply to the assessment under this subchapter.

10 (8) The department shall deposit all revenue collected under this subchapter
11 into the transportation fund.

12 **SECTION 9143. Nonstatutory provisions; Revenue.**

13 (1) EMERGENCY RULES CONCERNING OIL COMPANY ASSESSMENT. The department of
14 revenue may promulgate emergency rules under section 227.24 of the statutes
15 implementing subchapter XIV of chapter 77 of the statutes, as created by this act.
16 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
17 of revenue is not required to provide evidence that promulgating a rule under this
18 subsection as an emergency rule is necessary for the preservation of the public peace,
19 health, safety, or welfare and is not required to provide a finding of emergency for a
20 rule promulgated under this subsection.

21 **SECTION 9343. Initial applicability; Revenue.**

22 (1) OIL COMPANY ASSESSMENT. The treatment of section 25.40 (1) (bd), subchapter
23 XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the amounts
24 reported on the first remittance after October 1, 2009.

25 (END)

O-Note

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0779/P4ins
JK:kjf:ph

Insert 1 - 1

1 **SECTION 1.** 20.566 (1) (u) of the statutes is amended to read:
2 20.566 (1) (u) *Motor fuel tax administration.* From the transportation fund, the
3 amounts in the schedule to cover the costs, including data processing costs, incurred
4 in administering the motor fuel tax law, except s. 341.45, and the oil company
5 assessment under subch. XIV of ch. 77.

History: 1971 c. 108 ss. 2, 3, 6; 1971 c. 125 ss. 164, 173, 174, 175, 176; 1971 c. 211, 215; 1973 c. 90; 1975 c. 39 ss. 201, 732 (1); 1977 c. 29, 31, 418; 1979 c. 34 ss. 610m to 617, 2102 (46) (c); 1979 c. 63 ss. 3, 6; 1979 c. 177, 221; 1981 c. 20; 1981 c. 86 ss. 7, 71; 1981 c. 328 s. 4; 1983 a. 27 ss. 469 to 477; 1983 a. 368; 1983 a. 410 s. 2202 (38); 1985 a. 29 ss. 536 to 537r, 3202 (39) (a), (46) (c), (i); 1985 a. 41, 120; 1987 a. 27 ss. 444 to 458, 3200 (47); 1987 a. 92; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31, 335; 1991 a. 39, 259, 269; 1993 a. 16, 205, 263, 490; 1995 a. 27 ss. 546h to 546t, 1111mm to 1119r; 1995 a. 56, 227, 351; 1997 a. 27, 35, 41, 63, 148, 237, 252; 1999 a. 5, 9; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 16; 2001 a. 30 s. 108; 2001 a. 109; 2003 a. 33, 127, 139, 176, 231; 2005 a. 25, 71, 323, 460; 2007 a. 4, 20, 85, 96; s. 13.92 (1) (bm) 2.

Insert 2 - 16

✓ 1P3 11
****NOTE: This is reconciled chapter 77 (title). This SECTION has been affected by
drafts with the following LRB numbers: 0779 and 1139.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0779/P4dn
JK:kjf:ph

Date

✓ ✓ *Both*
This draft reconciles LRB-0779/P3 and LRB-1139/1. All of these drafts should continue to appear in the compiled bill.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0779/P4dn

JK:kjf:ph

January 30, 2009

This draft reconciles LRB-0779/P3 and LRB-1139/1. Both of these drafts should continue to appear in the compiled bill.

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0779/P4

JK:kjf:ph

PS
RMW/K

DOA:.....Byrnes, BB0203 - Oil company assessment

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 2-3-09

D-N

Don't Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill imposes an assessment on a motor vehicle fuel supplier at a rate not exceeding 3 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of biodiesel fuel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 20.566 (1) (u) of the statutes is amended to read:

20.566 (1)(u) *Motor fuel tax administration.* From the transportation fund, the amounts in the schedule to cover the costs, including data processing costs, incurred in administering the motor fuel tax law, except s. 341.45, and the oil company assessment under subch. XIV of ch. 77.

SECTION 2. 25.40 (1) (bd) of the statutes is created to read:

25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

SECTION 3. Chapter 77 (title) of the statutes is amended to read:

CHAPTER 77

TAXATION OF FOREST CROPLANDS:

REAL ESTATE TRANSFER FEES:

SALES AND USE TAXES; COUNTY, TRANSIT AUTHORITY,

AND SPECIAL DISTRICT SALES

AND USE TAXES; MANAGED FOREST

LAND; RECYCLING

SURCHARGE; LOCAL FOOD AND**BEVERAGE TAX; LOCAL RENTAL**

CAR TAX; PREMIER RESORT AREA

TAXES; STATE RENTAL VEHICLE FEE:

DRY CLEANING FEES; REGIONAL

TRANSIT AUTHORITY FEE;

****NOTE: This is reconciled chapter 77 (title). This SECTION has been affected by drafts with the following LRB numbers: 0779/P3 and 1139/1.

OIL COMPANY ASSESSMENT

SECTION 4. Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is created to read:

1 **CHAPTER 77**2 **SUBCHAPTER XIV**3 **OIL COMPANY ASSESSMENT**4 **77.998 Definitions.** In this subchapter:

5 (1) "Annual gross receipts" means the gross receipts that correspond to the
6 state's fiscal year.

7 (2) "Biodiesel fuel" means biodiesel fuel, as defined in s. 168.14 (2m) (a), that
8 is not blended with any petroleum product.

9 (3) "Department" means the department of revenue.

10 (4) "Gross receipts" means all consideration received from the first sale of
11 motor vehicle fuel received by a supplier for sale in this state, for sale for export to
12 this state, or for export to this state, not including state or federal excise taxes, or
13 petroleum inspection fees, collected from the purchaser. "Gross receipts" does not
14 include consideration received from the first sale of motor vehicle fuel received by a
15 supplier for sale in this state, for sale for export to this state, or for export to this state,
16 if the motor vehicle fuel is biodiesel fuel, ethanol blended with gasoline consisting of
17 at least 85 percent ethanol, or motor vehicle fuel specified under s. 78.01 (2) or (2m).

18 (5) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

19 (6) "Related party" means a person whose relationship with the supplier is
20 described under section 267 (b) of the Internal Revenue Code.

21 (7) "Supplier" has the meaning given in s. 78.005 (14).

22 (8) "Terminal operator" has the meaning given in s. 78.005 (16).

23 **77.9981 Imposition.** (1) For the privilege of doing business in this state, there
24 is imposed an assessment on each supplier at the rate of the following percentages
25 of the supplier's annual gross receipts that are derived from the first sale in this state

1 of motor vehicle fuel received by the supplier for sale in this state, for sale for export
2 to this state, or for export to this state:

3 (a) For the first \$15,000,000 of the supplier's annual gross receipts, 0.0 percent.

4 (b) For that portion of the supplier's annual gross receipts that exceeds
5 \$15,000,000, but not \$75,000,000, 0.5 percent.

6 (c) For that portion of the supplier's annual gross receipts that exceeds
7 \$75,000,000, but not \$120,000,000, 1.5 percent.

8 (d) For that portion of the supplier's annual gross receipts that exceeds
9 \$120,000,000, 3 percent.

10 (2) Any person, including a terminal operator, who is not a licensee under s.
11 78.09 and who either used any motor vehicle fuel in this state or has possession of
12 any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for
13 which the assessment under this subchapter has not been paid or for which no
14 supplier has incurred liability for paying the assessment, shall file a report, in the
15 manner described by the department, and pay the assessment based on the purchase
16 price of the motor vehicle fuel.

17 **77.9982 Administration.** (1) The department shall administer the
18 assessment under this subchapter and may take any action, or conduct any
19 proceeding as authorized by law, and impose interest and penalties, as provided
20 under subch. XIII of ch. 71.

21 (2) The assessments imposed under this subchapter are due and payable as
22 provided under s. 78.12 (5) and as provided by the department by rule.

23 (3) For purposes of determining the amount of the assessment imposed under
24 this subchapter, income derived from the first sale in this state of the fuels described
25 in s. 78.01 (2) and (2m) is not included in the supplier's annual gross receipts. For

1 purposes of determining the amount of the assessment imposed under this
2 subchapter, with regard to a transfer of motor vehicle fuel from a supplier to a related
3 party, the point of first sale in this state is the date of such transfer, and the annual
4 gross receipts are calculated on a monthly basis using an index determined by rule
5 by the department. For purposes of this subchapter, there is only one point of first
6 sale in this state with regard to the sale of the same motor vehicle fuel.

7 (4) No person who is subject to the assessment imposed under this subchapter
8 shall increase the selling price of motor vehicle fuel in order to recover the amount
9 of the assessment. The person primarily responsible for increasing the selling price
10 of motor vehicle fuel to recover the amount of the assessment is subject to a penalty
11 equal to the amount of the assessment passed through to the purchaser the supplier
12 received from any increase in the selling price that is implemented in order to recover
13 the assessment amount. For purposes of this subsection, the person primarily
14 responsible for increasing the selling price of motor vehicle fuel to recover the
15 amount of the assessment is the officer, employee, or other responsible person of a
16 corporation or other form of business association or the partner, member, employee,
17 or other responsible person of a partnership, limited liability company, or sole
18 proprietorship who, as such officer, employee, partner, member, or other responsible
19 person, has a duty to approve, confirm, ratify, or validate the selling price of motor
20 vehicle fuel.

21 (5) At the secretary of revenue's request, the attorney general may represent
22 this state, or assist a district attorney, in prosecuting any case arising under this
23 subchapter.

24 (6) In addition to any other audits the department conducts to administer and
25 enforce this subchapter, the department may audit any supplier who is subject to the

1 assessment imposed under this subchapter to determine whether the supplier has
2 increased the selling price of motor vehicle fuel in order to recover the amount of the
3 assessment. Subject to the confidentiality provisions under s. 71.78 (1) to (4) and (5)
4 to (8), as provided under sub. (7), annually, the department shall submit a report to
5 the governor and the legislature, as provided under s. 13.172 (2), that contains
6 information on all audits conducted under this subsection in the previous year.

7 (7) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and
8 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to
9 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.
10 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,
11 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under
12 ch. 71 apply to the assessment under this subchapter.

13 (8) The department shall deposit all revenue collected under this subchapter
14 into the transportation fund.

15 **SECTION 9143. Nonstatutory provisions; Revenue.**

16 (1) EMERGENCY RULES CONCERNING OIL COMPANY ASSESSMENT. The department of
17 revenue may promulgate emergency rules under section 227.24 of the statutes
18 implementing subchapter XIV of chapter 77 of the statutes, as created by this act.
19 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
20 of revenue is not required to provide evidence that promulgating a rule under this
21 subsection as an emergency rule is necessary for the preservation of the public peace,
22 health, safety, or welfare and is not required to provide a finding of emergency for a
23 rule promulgated under this subsection.

24 **SECTION 9343. Initial applicability; Revenue.**

1 (1) OIL COMPANY ASSESSMENT. The treatment of section 25.40 (1) (bd), subchapter
2 XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the amounts
3 reported on the first remittance after October 1, 2009.

4 (END)

D-note

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

D-N Date

0779/PS du
JK:kjf

This draft ^{makes} ~~makes~~ a technical correction to the language related to increasing the selling price to recover the amount of the arrearment.

DOR had recommended deleting the term "gain" with regard to that language. The previous draft deleted that term, but did not delete ^{the} the rest of the sentence ^{that} that described ^{the} the gain.

JK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0779/P5dn

JK:kjf:ph

February 3, 2009

This draft makes a technical correction to the language related to increasing the selling price to recover the amount of the assessment. DOR had recommended deleting the term "gain" with regard to that language. The previous draft deleted that term, but did not delete the rest of the sentence that described the gain.

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0779/P5

JK:kjf:ph

RM not R

DOA:.....Byrnes, BB0203 - Oil company assessment

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 2-5-09

SA-

do not gen.

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

→ This bill imposes an assessment on a motor vehicle fuel supplier at a rate not exceeding 3 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of biodiesel fuel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 20.566 (1) (u) of the statutes is amended to read:

profits tax

1 20.566 (1) (u) *Motor fuel tax administration*. From the transportation fund, the
2 amounts in the schedule to cover the costs, including data processing costs, incurred
3 in administering the motor fuel tax law, except s. 341.45, and the oil company
4 assessment under subch. XIV of ch. 77.

5 **SECTION 2.** 25.40 (1) (bd) of the statutes is created to read: *profits taxes*

6 25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

7 **SECTION 3.** Chapter 77 (title) of the statutes is amended to read:

8 **CHAPTER 77**

9 **TAXATION OF FOREST CROPLANDS;**

10 **REAL ESTATE TRANSFER FEES;**

11 **SALES AND USE TAXES; COUNTY, TRANSIT AUTHORITY,**

12 **AND SPECIAL DISTRICT SALES**

13 **AND USE TAXES; MANAGED FOREST**

14 **LAND; RECYCLING**

15 **SURCHARGE; LOCAL FOOD AND**

16 **BEVERAGE TAX; LOCAL RENTAL**

17 **CAR TAX; PREMIER RESORT AREA**

18 **TAXES; STATE RENTAL VEHICLE FEE;**

19 **DRY CLEANING FEES; REGIONAL**

20 **TRANSIT AUTHORITY FEE;**

***NOTE: This is reconciled chapter 77 (title). This SECTION has been affected by
drafts with the following LRB numbers: 0779/P3 and 1139/1.

21 **OIL COMPANY ASSESSMENT** *PROFITS TAX*

22 **SECTION 4.** Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is
23 created to read:

CHAPTER 77

SUBCHAPTER XIV

OIL COMPANY ASSESSMENT PROFITS TAX**77.998 Definitions.** In this subchapter:

(1) "Annual gross receipts" means the gross receipts that correspond to the state's fiscal year.

(2) "Biodiesel fuel" means biodiesel fuel, as defined in s. 168.14 (2m) (a), that is not blended with any petroleum product.

(3) "Department" means the department of revenue.

(4) "Gross receipts" means all consideration received from the first sale of motor vehicle fuel received by a supplier for sale in this state, for sale for export to this state, or for export to this state, not including state or federal excise taxes, or petroleum inspection fees, collected from the purchaser. "Gross receipts" does not include consideration received from the first sale of motor vehicle fuel received by a supplier for sale in this state, for sale for export to this state, or for export to this state, if the motor vehicle fuel is biodiesel fuel, ethanol blended with gasoline consisting of at least 85 percent ethanol, or motor vehicle fuel specified under s. 78.01 (2) or (2m).

(5) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

(6) "Related party" means a person whose relationship with the supplier is described under section 267 (b) of the Internal Revenue Code.

(7) "Supplier" has the meaning given in s. 78.005 (14).

(8) "Terminal operator" has the meaning given in s. 78.005 (16).

77.9981 Imposition. (1) For the privilege of doing business in this state, there is imposed an assessment a tax on each supplier at the rate of the following percentages of the supplier's annual gross receipts that are derived from the first sale in this state

1 of motor vehicle fuel received by the supplier for sale in this state, for sale for export
2 to this state, or for export to this state:

3 (a) For the first \$15,000,000 of the supplier's annual gross receipts, 0.0 percent.

4 (b) For that portion of the supplier's annual gross receipts that exceeds
5 \$15,000,000, but not \$75,000,000, 0.5 percent.

6 (c) For that portion of the supplier's annual gross receipts that exceeds
7 \$75,000,000, but not \$120,000,000, 1.5 percent.

8 (d) For that portion of the supplier's annual gross receipts that exceeds
9 \$120,000,000, 3 percent.

10 (2) Any person, including a terminal operator, who is not a licensee under s.
11 78.09 and who either used any motor vehicle fuel in this state or has possession of
12 any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for
13 which the assessment ^{tax} under this subchapter has not been paid or for which no
14 supplier has incurred liability for paying the assessment, shall file a report, in the ^{tax}
15 manner described by the department, and pay the assessment ^{tax} based on the purchase
16 price of the motor vehicle fuel.

17 **77.9982 Administration.** (1) The department shall administer the
18 assessment ^{tax} under this subchapter and may take any action, or conduct any
19 proceeding as authorized by law, and impose interest and penalties, as provided
20 under subch. XIII of ch. 71. ^{taxer}

21 (2) The assessments imposed under this subchapter are due and payable as
22 provided under s. 78.12 (5) and as provided by the department by rule. ^{tax}

23 (3) For purposes of determining the amount of the assessment ^{tax} imposed under
24 this subchapter, income derived from the first sale in this state of the fuels described
25 in s. 78.01 (2) and (2m) is not included in the supplier's annual gross receipts. For

1 purposes of determining the amount of the assessment imposed under this
2 subchapter, with regard to a transfer of motor vehicle fuel from a supplier to a related
3 party, the point of first sale in this state is the date of such transfer, and the annual
4 gross receipts are calculated on a monthly basis using an index determined by rule
5 by the department. For purposes of this subchapter, there is only one point of first
6 sale in this state with regard to the sale of the same motor vehicle fuel. tax

7 (4) No person who is subject to the assessment imposed under this subchapter
8 shall increase the selling price of motor vehicle fuel in order to recover the amount
9 of the assessment. tax The person primarily responsible for increasing the selling price
10 of motor vehicle fuel to recover the amount of the assessment is subject to a penalty tax
11 equal to the amount of the assessment passed through to the purchaser. For tax
12 purposes of this subsection, the person primarily responsible for increasing the
13 selling price of motor vehicle fuel to recover the amount of the assessment is the tax
14 officer, employee, or other responsible person of a corporation or other form of
15 business association or the partner, member, employee, or other responsible person
16 of a partnership, limited liability company, or sole proprietorship who, as such officer,
17 employee, partner, member, or other responsible person, has a duty to approve,
18 confirm, ratify, or validate the selling price of motor vehicle fuel.

19 (5) At the secretary of revenue's request, the attorney general may represent
20 this state, or assist a district attorney, in prosecuting any case arising under this
21 subchapter.

22 (6) In addition to any other audits the department conducts to administer and
23 enforce this subchapter, the department may audit any supplier who is subject to the
24 assessment imposed under this subchapter to determine whether the supplier has
25 increased the selling price of motor vehicle fuel in order to recover the amount of the tax

tax
1 ~~assessment~~ Subject to the confidentiality provisions under s. 71.78 (1) to (4) and (5)
2 to (8), as provided under sub. (7), annually, the department shall submit a report to
3 the governor and the legislature, as provided under s. 13.172 (2), that contains
4 information on all audits conducted under this subsection in the previous year.

5 (7) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and
6 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to
7 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.
8 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,
9 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under
10 ch. 71 apply to the ~~assessment~~ under this subchapter. *taxes*

11 (8) The department shall deposit all revenue collected under this subchapter
12 into the transportation fund.

13 **SECTION 9143. Nonstatutory provisions; Revenue.** *CS*
PROFITS TAX

14 (1) ~~EMERGENCY RULES CONCERNING OIL COMPANY ASSESSMENT~~ The department of
15 revenue may promulgate emergency rules under section 227.24 of the statutes
16 implementing subchapter XIV of chapter 77 of the statutes, as created by this act.
17 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
18 of revenue is not required to provide evidence that promulgating a rule under this
19 subsection as an emergency rule is necessary for the preservation of the public peace,
20 health, safety, or welfare and is not required to provide a finding of emergency for a
21 rule promulgated under this subsection.

22 **SECTION 9343. Initial applicability; Revenue.**

CS

PROFITS TAX

1

(1) OIL COMPANY ASSESSMENT. The treatment of section 25.40 (1) (bd), subchapter

2

XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the amounts

3

reported on the first remittance after October 1, 2009.

4

(END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0779/P6

JK:kjf&bjk:ph

DOA:.....Byrnes, BB0203 - Oil company assessment

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill imposes a tax on a motor vehicle fuel supplier at a rate not exceeding 3 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the tax. For the purpose of determining the amount of the tax, income derived from the first sale in this state of biodiesel fuel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the tax is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 **SECTION 1.** 20.566 (1) (u) of the statutes is amended to read:

3 20.566 (1) (u) *Motor fuel tax administration.* From the transportation fund, the
4 amounts in the schedule to cover the costs, including data processing costs, incurred

1 in administering the motor fuel tax law, except s. 341.45, and the oil company profits
2 tax under subch. XIV of ch. 77.

3 **SECTION 2.** 25.40 (1) (bd) of the statutes is created to read:

4 25.40 (1) (bd) Oil company profit taxes under subch. XIV of ch. 77.

5 **SECTION 3.** Chapter 77 (title) of the statutes is amended to read:

6 **CHAPTER 77**

7 **TAXATION OF FOREST CROPLANDS;**

8 **REAL ESTATE TRANSFER FEES;**

9 **SALES AND USE TAXES; COUNTY, TRANSIT AUTHORITY,**

10 **AND SPECIAL DISTRICT SALES**

11 **AND USE TAXES; MANAGED FOREST**

12 **LAND; RECYCLING**

13 **SURCHARGE; LOCAL FOOD AND**

14 **BEVERAGE TAX; LOCAL RENTAL**

15 **CAR TAX; PREMIER RESORT AREA**

16 **TAXES; STATE RENTAL VEHICLE FEE;**

17 **DRY CLEANING FEES; REGIONAL**

18 **TRANSIT AUTHORITY FEE;**

****NOTE: This is reconciled chapter 77 (title). This SECTION has been affected by
drafts with the following LRB numbers: 0779/P3 and 1139/1.

19 **OIL COMPANY PROFITS TAX**

20 **SECTION 4.** Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is
21 created to read:

22 **CHAPTER 77**

SUBCHAPTER XIV

OIL PROFITS TAX

77.998 Definitions. In this subchapter:

(1) "Annual gross receipts" means the gross receipts that correspond to the state's fiscal year.

(2) "Biodiesel fuel" means biodiesel fuel, as defined in s. 168.14 (2m) (a), that is not blended with any petroleum product.

(3) "Department" means the department of revenue.

(4) "Gross receipts" means all consideration received from the first sale of motor vehicle fuel received by a supplier for sale in this state, for sale for export to this state, or for export to this state, not including state or federal excise taxes, or petroleum inspection fees, collected from the purchaser. "Gross receipts" does not include consideration received from the first sale of motor vehicle fuel received by a supplier for sale in this state, for sale for export to this state, or for export to this state, if the motor vehicle fuel is biodiesel fuel, ethanol blended with gasoline consisting of at least 85 percent ethanol, or motor vehicle fuel specified under s. 78.01 (2) or (2m).

(5) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

(6) "Related party" means a person whose relationship with the supplier is described under section 267 (b) of the Internal Revenue Code.

(7) "Supplier" has the meaning given in s. 78.005 (14).

(8) "Terminal operator" has the meaning given in s. 78.005 (16).

77.9981 Imposition. (1) For the privilege of doing business in this state, there is imposed a tax on each supplier at the rate of the following percentages of the supplier's annual gross receipts that are derived from the first sale in this state of

1 motor vehicle fuel received by the supplier for sale in this state, for sale for export
2 to this state, or for export to this state:

3 (a) For the first \$15,000,000 of the supplier's annual gross receipts, 0.0 percent.

4 (b) For that portion of the supplier's annual gross receipts that exceeds
5 \$15,000,000, but not \$75,000,000, 0.5 percent.

6 (c) For that portion of the supplier's annual gross receipts that exceeds
7 \$75,000,000, but not \$120,000,000, 1.5 percent.

8 (d) For that portion of the supplier's annual gross receipts that exceeds
9 \$120,000,000, 3 percent.

10 (2) Any person, including a terminal operator, who is not a licensee under s.
11 78.09 and who either used any motor vehicle fuel in this state or has possession of
12 any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for
13 which the tax under this subchapter has not been paid or for which no supplier has
14 incurred liability for paying the tax, shall file a report, in the manner described by
15 the department, and pay the tax based on the purchase price of the motor vehicle fuel.

16 **77.9982 Administration.** (1) The department shall administer the tax under
17 this subchapter and may take any action, or conduct any proceeding as authorized
18 by law, and impose interest and penalties, as provided under subch. XIII of ch. 71.

19 (2) The taxes imposed under this subchapter are due and payable as provided
20 under s. 78.12 (5) and as provided by the department by rule.

21 (3) For purposes of determining the amount of the tax imposed under this
22 subchapter, income derived from the first sale in this state of the fuels described in
23 s. 78.01 (2) and (2m) is not included in the supplier's annual gross receipts. For
24 purposes of determining the amount of the tax imposed under this subchapter, with
25 regard to a transfer of motor vehicle fuel from a supplier to a related party, the point

1 of first sale in this state is the date of such transfer, and the annual gross receipts
2 are calculated on a monthly basis using an index determined by rule by the
3 department. For purposes of this subchapter, there is only one point of first sale in
4 this state with regard to the sale of the same motor vehicle fuel.

5 (4) No person who is subject to the tax imposed under this subchapter shall
6 increase the selling price of motor vehicle fuel in order to recover the amount of the
7 tax. The person primarily responsible for increasing the selling price of motor vehicle
8 fuel to recover the amount of the tax is subject to a penalty equal to the amount of
9 the tax passed through to the purchaser. For purposes of this subsection, the person
10 primarily responsible for increasing the selling price of motor vehicle fuel to recover
11 the amount of the tax is the officer, employee, or other responsible person of a
12 corporation or other form of business association or the partner, member, employee,
13 or other responsible person of a partnership, limited liability company, or sole
14 proprietorship who, as such officer, employee, partner, member, or other responsible
15 person, has a duty to approve, confirm, ratify, or validate the selling price of motor
16 vehicle fuel.

17 (5) At the secretary of revenue's request, the attorney general may represent
18 this state, or assist a district attorney, in prosecuting any case arising under this
19 subchapter.

20 (6) In addition to any other audits the department conducts to administer and
21 enforce this subchapter, the department may audit any supplier who is subject to the
22 tax imposed under this subchapter to determine whether the supplier has increased
23 the selling price of motor vehicle fuel in order to recover the amount of the tax.
24 Subject to the confidentiality provisions under s. 71.78 (1) to (4) and (5) to (8), as
25 provided under sub. (7), annually, the department shall submit a report to the

1 governor and the legislature, as provided under s. 13.172 (2), that contains
2 information on all audits conducted under this subsection in the previous year.

3 (7) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and
4 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to
5 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.
6 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,
7 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under
8 ch. 71 apply to the taxes under this subchapter.

9 (8) The department shall deposit all revenue collected under this subchapter
10 into the transportation fund.

11 **SECTION 9143. Nonstatutory provisions; Revenue.**

12 (1) EMERGENCY RULES CONCERNING OIL COMPANY PROFITS TAX. The department of
13 revenue may promulgate emergency rules under section 227.24 of the statutes
14 implementing subchapter XIV of chapter 77 of the statutes, as created by this act.
15 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
16 of revenue is not required to provide evidence that promulgating a rule under this
17 subsection as an emergency rule is necessary for the preservation of the public peace,
18 health, safety, or welfare and is not required to provide a finding of emergency for a
19 rule promulgated under this subsection.

20 **SECTION 9343. Initial applicability; Revenue.**

21 (1) OIL COMPANY PROFITS TAX. The treatment of section 25.40 (1) (bd), subchapter
22 XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the amounts
23 reported on the first remittance after October 1, 2009.

24 (END)